

WATER COUNCIL MEETING

Dept. of Environmental Services
29 Hazen Dr., Concord, N.H.

October 13, 2004
9:00 a.m.

Members present: Councilors Bridges, Bradley, Butler, Cowan, Densberger, Glines, Lussier, Phillips, and Varotsis

Members absent: Councilors Barrett, DiMarzio, Dupee, Frost, Ingham, Lyons and Patenaude

Chairman Bridges opened the meeting at 9:00 a.m.

1. Approval of Minutes of September 8, 2004 Meeting

A motion was made by Councilor Lussier to accept the minutes of the September 8, 2004 meeting as presented. The motion was seconded by Councilor Butler and unanimously voted.

2. Status of Appeals

Michael Sclafani distributed an Appeals Status Report and reviewed pending appeals with the council.

- **Docket No. 03-10 WC - Appeal of Conservation Law Foundation**
A stay remains in effect on this appeal pending the outcome of a Wetlands Council appeal of a water quality certificate which is scheduled to be heard on October 26, 2004.
- **Docket No. 03-14 WC - Appeal of Gerald A. Bell**
A stay remains in effect on this appeal pending the resolution of a declaratory judgment action before the Merrimack County Superior Court.
- **Docket No. 04-05 WC - Appeal of Freudenberg-NOK General Partnership**
On October 9, 2004 the appellant filed a Motion to Stay action on this appeal for 30 days and requested that a hearing be scheduled.

Councilor Densberger made a motion to grant appellant's Motion to Stay. Councilor Butler seconded the motion and it was unanimously voted.

- **Docket No. 04-14 WC - Appeal of Mark and Marianne Bonaiuto**
Mr. Sclafani distributed a copy of a revised draft of a Decision & Order waiving Env-WC 203.02 and dismissing the Notice of Appeal.

Councilor Densberger made a motion to accept the Decision & Order as presented. Councilor Bradley seconded the motion and it was unanimously voted.

- **Docket No. 04-15 WC - Appeal of Town of Nottingham Selectmen**
Action on this appeal was stayed at the September meeting pending receipt of an opinion from council's attorney. Attorney Edwards will meet with the council today at approximately 10:30 a.m., after which the council meeting will be reconvened and this appeal will be considered.
- **Docket No. 04-16 WC - Appeal of Turrettes Trust**
On September 30, 2004 the appellant withdrew its appeal.
- **Docket No. 04-17 WC - Appeal of Save Our Groundwater "SOG"**
Action on this appeal was stayed at the September meeting pending receipt of an opinion from council's attorney. Action on this appeal will be postponed until after the 10:30 a.m. meeting with Attorney Edwards.

On October 1, 2004, USA Springs filed a letter objecting to the conduct of a water council member at the September 8, 2004 council meeting. On October 12, 2004, the appellant filed a letter with concerns of a possible conflict of interest as both DES's attorney and the Water Council's attorney are with the Department of Justice.

- **Docket No. 04-18 WC - Appeal of Thaddeus Dymon**
On October 8, 2004, a Notice of Appeal was filed along with an appearance on behalf of the appellant by Attorney Daniel G. Smith. This is an appeal of a September 10, 2004 decision by DES denying a request for waiver of Env-Ws 386.56(h) (12), (14), and (18) to allow swimming, fishing and boating on Gilman Pond in Unity, NH.

A motion was made by Councilor Lussier to accept the appeal. Councilor Butler seconded the motion and it was unanimously voted.

At Chairman Bridges' request, Councilor Cowan will meet with Mr. Sciafani to schedule a pre-hearing conference with the parties and will preside at an appeal hearing.

- **Docket No. 04-19 WC - Appeal of Town of Newport**
On October 11, 2004, a Notice of Appeal was received via Federal Express. This is an appeal of a September 10, 2004 decision by DES which grants a waiver of portions of Env-Ws 386.56 (h)(18) to allow Thaddeus Dymon to fish from his property on Gilman Pond in Unity, NH.

Councilor Varotsis made a motion to accept the appeal. Councilor Butler seconded the motion and it was unanimously voted.

At Chairman Bridges' request, Councilor Densberger will meet with Mr. Sciafani to schedule a pre-hearing conference with the parties and will preside at an appeal hearing.

4. Other Business

Paul Currier, Administrator of the Watershed Management Bureau, updated the council on work being done by the Water Quality Standards Advisory Committee ("WQSAC"). The advisory committee was formed in November of 2000 and is comprised of representatives from a broad spectrum of interest groups. The committee will assist DES with formulating rules to enable transfer of water from one waterbody to another within the framework of the Clean Water Act antidegradation requirements.

The Clean Water Act requires that state water quality assessments be updated every two years. This assessment is intended to determine which waterbodies meet standards and which are impaired for one or more designated use. In 2002, DES divided the state's surface waters into over 5,100 assessment units. The Consolidated Assessment and Listing Methodology ("CALM") is used for quantitative descriptions of core parameters, minimum amount of data, and method of analysis for assessment for each designated use and waterbody type. The results of the assessments are available online. New Hampshire is one of the first states in the nation to use the Assessment Database developed by EPA.

Pursuant to the Clean Water Act, any project which involves a discharge to surface water must have a state 401 Water Quality certification that construction and operation of the project will meet water quality standards. Further, the certification requires prediction of future water quality during construction and operation of the project.

Under federal antidegradation rules, waterbodies are divided into three tiers: (1) quality of water necessary to maintain existing uses, (2) high quality waters, and (3) outstanding resource waters. Although the majority of waters are not accessed as yet, it is likely that most New Hampshire waters will fall into the Tier 2 classification, which is the area the WQSAC will be focusing on at future meetings.

3. Proposed Amended Rules Env-Ws 904, Standards for Pretreatment of Industrial Wastewater

George Carlson of the Wastewater Engineering Bureau, Industrial Pretreatment Program, presented proposed amended Env-Ws 904 Rules, Standards for Pretreatment of Industrial Wastewater. The current rules expire on November 16, 2004.

Changes to the rules include the following:

- updating definitions to reflect changes in RSAs;
- correcting and expanding prohibited wastes list to include hazardous wastes; and
- clarifying format and information required for discharge requests to DES.

New requirements include the following:

- a list of minimum provisions in the discharge permit issued by a municipality to an industrial user;
- a provision that a municipality report to DES at least every 5 years to demonstrate compliance with RSA-A:5, III; and
- a certified copy of adopted sewer use ordinance be provided to DES.

Councilor Phillips made a motion to approve the proposed rules as presented. Councilor Varotsis seconded the motion and it was unanimously voted.

Mr. Carlson will notify the councilors of hearing dates as scheduled.

10:15 - Recess called by Chairman Bridges

10:30 - Executive Session with Council's Attorney convened

11:25 - Water Council meeting reconvened

- **Docket No. 04-15 WC - Appeal of Town of Nottingham Selectmen**
- **Docket No. 04-17 WC - Appeal of Save Our Groundwater "SOG"**

Chairman Bridges reconvened the meeting for the purpose of taking action on the above appeals:

Councilor Butler made a motion to not accept Docket No. 04-15 WC (Appeal of Town of Nottingham Selectmen) and Docket No. 04-17 WC (Appeal of Save Our Groundwater "SOG") due to lack of jurisdiction. Councilor Bradley seconded the motion and it was unanimously voted.

5. Next Meeting

The next meeting will be held on November 10, 2004.

6. Adjournment

A motion was made by Councilor Varotsis and seconded by Councilor Bradley to adjourn. It was unanimously voted.

The meeting adjourned at approximately 11:30 a.m.